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April 30, 2004

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant: David W. Pratt
Serial No.: 09/681,814
Filed: 06/11/2001
For: Dual Function Bailer
Our Reference No.: 1053.18

Examiner: Dean J. Kramer
Art Unit: 3652
Confirmation No.: 6882

Dear Sir:

In response to the Decision on Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.81 mailed on April 19, 2004, we enclose the following:

1. Statement of Facts In Support of Timely Filed Response to the Office Action dated December 24, 2002 having a Certificate of Mailing dated April 30, 2004;
2. Copy of response to non-final examiner's action having a Certificate of Facsimile Transmission dated March 14, 2003 (9 pages);
3. Copy of Auto-Reply Facsimile Transmission indicating timely receipt by the Office (1 page); and
4. Self-addressed and postage pre-paid post card to serve as a receipt for items 1 and 3.

Very respectfully,

SMITH & HOPEN

By: Ronald E. Smith
ron.smith@baypatents.com

RES/sb

Encl.

CERTIFICATE OF MAILING
(37 C.F.R. 1.8)

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 30, 2004.

Date: April 30, 2004

Shelley Butz

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
David W. Pratt)
Serial No.: 09/681,814) Examiner: Dean J. Kramer
Art Unit: 3652
Confirmation No. 6882
Filed: 06/11/2002)
For: Dual Function Bailer)
)

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Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF FACTS IN SUPPORT OF TIMELY FILED RESPONSE TO
OUTSTANDING OFFICE ACTION DATED DECEMBER 24, 2002**

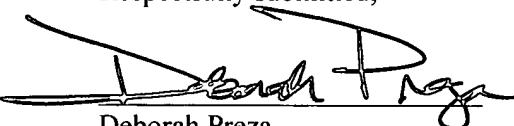
I, Deborah Preza, hereby state the following from my personal knowledge:

The original response to the non-final examiner's action mailed on December 24, 2002 was transmitted to the Office's Official Facsimile Number for the Technology Center 3600 by me on March 14, 2003, with a Certificate of Facsimile Transmission dated March 14, 2003.

DECLARATION

I hereby declare that all statements made herein of my own personal knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,


Deborah Preza
Smith & Hopen, PA
15950 Bay Vista Drive
Suite 220
Clearwater, Florida 33760

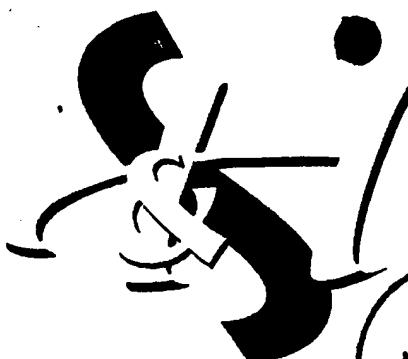
CERTIFICATE OF MAILING

(37 CFR § 1.8)

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service as first class mail in envelope addressed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 30, 2004.

Date: **April 30, 2004**


Shelley Butz



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Fax



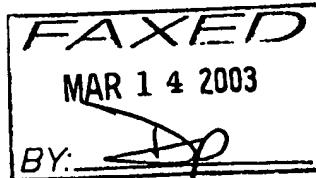
INTELLECTUAL PROPERTY LAW

To: U.S. Patent & Trademark Office From: Ronald E. Smith
Attn: Dean J. Kramer - Art Unit 3652 Client: 1053.18
Fax: (703) 872-9326 Pages: 9 including coversheet
Phone: (703) 308-2181 Date: March 14, 2003
Re: USSN 09/681,814 CC: David W. Pratt

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: David W. Pratt

Serial No.: 09/681,814

Filed: 06/11/2001

For: Dual Function Bailer

Art Unit: 3652
Examiner: Kramer, Dean J.

COPY

Faxed to Technology Center 3700 at (703) 872-9326
 Box Non-Fee Amendment
 Assistant Commissioner for Patents
 Washington, D.C. 20231

AMENDMENT TRANSMITTAL

1. Transmitted herewith is an amendment for this application.

STATUS

2. Applicant is an independent inventor. A statement was already filed.

EXTENSION OF TERM

3. The proceedings herein are for a patent application and the provisions of 37 C.F.R. 1.136 apply. Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

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CERTIFICATE OF FACSIMILE TRANSMISSION
(37 C.F.R. 1.8(a))

I HEREBY CERTIFY that this Amendment A, including Introductory Comments, Amendments to the Claims, and Remarks, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3652, Attn: Dean J. Kramer, (703) 872-9326 on March 14, 2003.

Dated: March 14, 2003

Deborah Preza

COPY

FEE FOR CLAIMS

4. The fee for claims (37 C.F.R. 1.16(b)-(d)) has been calculated as shown below:

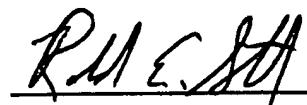
(Col. 1)		(Col. 2)		(Col. 3) SMALL ENTITY		
Claims Remaining After Amendment	Highest No. Previously Paid For	Present Extra	Rate	Addit. Fee		
Total	1	Minus	20	= 0	x \$9 = \$0	
Indep.	1	Minus	3	= 0	x \$42 = \$0	
First Presentation of Multiple Dependent Claim				+ \$140 = \$0		
				Total Addit. Fee	\$0	

- If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.
- If the "Highest No. Previously Paid For" IN THIS SPACE (Column 2, Row 1) is less than 20, enter "20".
- If the "Highest No. Previously Paid For" IN THIS SPACE (Column 2, Row 2) is less than 3, enter "3".
- The "Highest No. Previously Paid For" (Total or Indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

No additional fee for claims is required.

FEE DEFICIENCY

5. If any additional extension and/or fee is required, charge Deposit Account No. 500745.
If any additional fee for claims is required, charge Deposit Account No. 500745.



SIGNATURE OF PRACTITIONER

Reg. No. 28,761
Tel. No.: (727) 507-8558

Ronald E. Smith
Smith & Hopen, P.A.
15950 Bay Vista Drive, Ste. 220
Clearwater, FL 33760

TO:Auto-reply fax to 7275078668 COMPANY:

COPY

Auto-Reply Facsimile Transmission



TO:

Fax Sender at 7275078668

Fax Information

Date Received:

3/14/03 3:10:42 PM [Eastern Standard Time]

Total Pages:

9 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received at the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

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Page
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03/14/2003 03:08 FAX 7275078668		Smith & Hopen, P.A.	001/008																								
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<p>Fax INTELLECTUAL PROPERTY LAW</p> <table border="1"> <tr> <td>To:</td> <td>U.S. Patent & Trademark Office</td> <td>From:</td> <td>Ronald E. Smith</td> </tr> <tr> <td>Attn:</td> <td>Dean J. Kramer - Art Unit 3632</td> <td>Client:</td> <td>1033.18</td> </tr> <tr> <td>Fax:</td> <td>(703) 372-9326</td> <td>Pages:</td> <td>9 including coversheet</td> </tr> <tr> <td>Phone:</td> <td>(703) 308-2181</td> <td>Date:</td> <td>March 14, 2003</td> </tr> <tr> <td>To:</td> <td>USSN 09/681,814</td> <td>CC:</td> <td>David W. Pratt</td> </tr> <tr> <td colspan="4"> <input type="checkbox"/> Urgent <input checked="" type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle </td> </tr> </table>				To:	U.S. Patent & Trademark Office	From:	Ronald E. Smith	Attn:	Dean J. Kramer - Art Unit 3632	Client:	1033.18	Fax:	(703) 372-9326	Pages:	9 including coversheet	Phone:	(703) 308-2181	Date:	March 14, 2003	To:	USSN 09/681,814	CC:	David W. Pratt	<input type="checkbox"/> Urgent <input checked="" type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle			
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Practitioner's Docket No.: 1053.18

PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David W. Pratt)
Serial No.: 09/681, 814)
Filing Date: 06/11/2001)
For: Dual Function Bailer)
Examiner: Kramer, Dean J.
Art Unit: 3652

Faxed to Technology Center 3700 at 703-872-9326
Box Non-Fee Amendment
Assistant Commissioner for Patents
Washington, D.C. 20231

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AMENDMENT A

INTRODUCTORY COMMENTS

This amendment is in response to the nonfinal Examiner's Action mailed December 24, 2002, having a shortened statutory period for response set to expire March 24, 2003.

Applicant makes no amendment to the specification.

A Submission Of Proposed Drawing Change For Approval Of Examiner is submitted herewith as a separate paper.

An Amendment to the Claims is attached hereto as a separate paper.

Remarks are also attached hereto as a separate paper.

Very respectfully,

SMITH & HOPEN

By: Ronald E. Smith

Ronald E. Smith
Suite 220
15950 Bay Vista Drive
Clearwater, FL 33760
(727) 507-8558
Attorneys for Applicant

Dated: March 14, 2003

pc: Mr. David W. Pratt

COPY

AMENDMENTS TO THE CLAIMS

1. (Currently amended) A bailer, comprising:

~~an elongate tubular body having a first an externally threaded uppermost end and a second end an externally threaded downspout;~~

~~a handle mounted to said externally threaded uppermost end, said handle protruding upwardly from said uppermost end of said elongate tubular body;~~

~~a first internally threaded imperforate cap adapted to fit onto said externally threaded uppermost end of said elongate tubular body, said first imperforate cap preventing liquid fluid from flowing out of said first uppermost end independently of the position of the bailer;~~

~~said first internally threaded imperforate cap having a depth sufficient to accommodate said handle;~~

 said second end having a one-way valved opening so that liquid fluid may flow into said elongate tubular body when said bailer is immersed in a body of liquid fluid and so that said liquid fluid is substantially prevented from flowing out of said elongate tubular body when said bailer is lifted from said body of liquid fluid;

~~an a second internally threaded imperforate cap adapted to fit onto said second end of said elongate tubular body externally threaded downspout, said second internally threaded imperforate cap preventing liquid fluid from flowing out of said second end of said elongate tubular body externally threaded downspout independently of the position of the bailer.~~

Claims 2-6 (cancelled)

Claims 7-12 (withdrawn)

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REMARKS

Applicant has carefully studied the nonfinal Examiner's Action mailed December 24, 2002, and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings and numbered paragraphs that correspond to the centered headings and paragraph numbering employed by the Office, to ensure full response on the merits to each finding of the Office.

1. Applicant acknowledges that claims 1-6 are readable on the elected species.
2. Applicant acknowledges the withdrawal of claims 7-12.

Claim Rejections – 35 U.S.C. § 112

3. Claims 3-6 stand rejected under 35 U.S.C. § 112, second paragraph, because the phrase "said imperforate cap" as recited in each of said claims is ambiguous in view of the recital of "an imperforate cap" recited in claim 1 and the same recital in claims 3 and 5. Claim 5 is further confusing in that it appears to claim an imperforate cap at the second end of the bailer as recited in claim 1 and an additional imperforate cap on the downspout. Cancellation of claims 3-6 has rendered moot this ground of rejection.

Claim Rejections – 35 U.S.C. § 102

4. Applicant acknowledges the quotation of 35 U.S.C. § 102(b).
5. Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Robbins. Cancellation of claims 2-4 has rendered moot the rejection of those claims. Reconsideration and withdrawal of this ground of rejection as it relates to claim 1, currently amended, is requested for the reasons that follow.

The Robbins structure has two embodiments. In the first embodiment, bail member 16 is removed from its screw-threaded engagement with the "upper extremity" of body member 11, septum fitting 18 is screw-threadedly engaged to said upper extremity of body member 11, and then top closure fitting 21 is screw-threadedly engaged to external threads 22 formed in said septum member. Bottom closure member 23 screw-threadedly engages the "bottom" of tube 11. In a second embodiment, septum fitting 18 is not used. Instead, bail member 16 is removed, as in the first embodiment, and top closure fitting 21 screw-threadedly engages the upper extremity of tube 11.

Clearly, the need to first remove bail member 16 is common to both embodiments. Applicant did not follow the teachings and suggestions of Robbins. Handle 12 of Applicant's structure is formed integrally with elongate tubular body 16 and cannot be removed therefrom. Applicant's structure includes no removable bail member 16. Thus, the step of removing bail member 16 from tube 11, required in both embodiments of Robbins, is obviated in the structure invented and claimed by Applicant.

Applicant's structure has less parts than both embodiments of Robbins and is thus easier to use. A worker in the field need not remove bail member 16 preparatory to screw-threading septum 18 onto tubular member 11 and closure means 21 to said septum member (first embodiment) or preparatory to screw-threading said closure means 21 directly onto said tubular member 11. There being no removable bail member 16 in Applicant's structure, a user of Applicant's invention merely needs to screw-threadedly engage a first closure member with the threads formed on the first end of elongate tubular body 16 and a second closure member with the threads formed on the downspout.

Clearly, the first embodiment of Robbins has five (5) parts and the second embodiment of Robbins has four (4) parts. In Applicant's only embodiment, there are only three parts.

Top closure member 21 of Robbins cannot fit over bail top member 16 as is apparent from the Robbins drawings and from the Robbins specification that consistently describes the need to remove bail top member 16 before attaching either septum 18 or top closure member 21 thereto. Note the shallow structure of top closure member 21. It clearly cannot accommodate bail top member 16 and that is why its use requires the removal of said top bail member.

Moreover, even if top closure member 21 were deep enough to accommodate bail member 16, said top closure member 21 could not screw-threadedly engage the threads formed in the "upper extremity" of tubular body member 11 because said threads are already engaged by the screw-threads of top closure member 21. It would then require Applicant's disclosure to form a third set of screw-threads on tubular body member 21, said third set of screw-threads being positioned just to the left of the threads formed in the "upper extremity" (the right end as drawn) of tubular body member 21.

It is axiomatic that Applicant's own disclosure cannot be used to modify a prior art reference, as if Applicant's disclosure had preceded itself in time. It follows that it would not have been obvious at the time Applicant's invention was made to add the aforesaid third set of

screw-threads to the Robbins tubular main body 11, to remove the screw-threads on the "upper extremity" of said tubular main body 11 so that bail top member 16 is formed integrally with said tubular main body 11, to excise septum member 18 from the Robbins disclosure, and to increase the depth of top closure member 21 so that it could screw-threadedly engage the third set of screw-threads and accommodate bail top member 16.

The mere recitation of all the changes to the Robbins inventive structure that must be made before that structure can be said to anticipate Applicant's inventive structure makes it clear that Applicant is entitled to the *quid pro quo* promised to those who advance the useful arts.

In view of these remarks, the significance of all amendments to claim 1 should now be clear. By providing a first cap of depth sufficient to accommodate the handle that projects upwardly from the uppermost end of the elongate tubular body, Applicant reduced the number of parts required to provide a bailer that serves as its own transportation container. Instead of first having to remove bail top member 16 of Robbins, followed by attachment of either septum 18 and top closure fitting 21 or just top closure fitting 21, the user simply applies the first internally threaded imperforate cap to the externally threaded uppermost end of the bailer, in accommodating relation to handle 12, and the second internally threaded imperforate cap to the downspout. No parts need to be removed prior to such attachment. In this way, Applicant has defined over the contribution of Robbins.

Claim Rejections – 35 USC § 103

6. Applicant acknowledges the quotation of 35 U.S.C. § 103(a).
7. Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins in view of Hunkin et al. This ground of rejection has been rendered moot by the cancellation of claims 5 and 6.

Drawings

8. The drawings stand objected to because the reference numeral "16b" appears in the specification but not in the drawings. A Submission Of Proposed Drawing Changes For Approval of Examiner is filed herewith as a separate paper. The Submission includes a proposed drawing change adding said reference numeral to Fig. 1 of the drawings in permanent red ink.

Conclusion

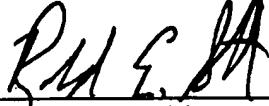
9. Applicant agrees that the art made of record and not relied upon is not more pertinent to the claimed invention than the art cited.

COPY

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested. Applicant thanks the Office for its careful examination of this important patent application.

Very respectfully,

SMITH & HOPEN

By: 

Ronald E. Smith
Suite 220
15950 Bay Vista Drive
Clearwater, FL 33760
(727) 507-8558
Attorneys for Applicant

Dated: March 14, 2003

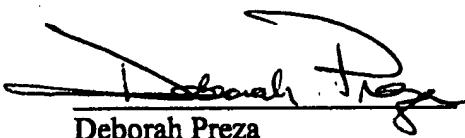
pc: Mr. David W. Pratt

CERTIFICATE OF FACSIMILE TRANSMISSION

(37 C.F.R. 1.8 (a))

I HEREBY CERTIFY that this Amendment A, including Introductory Comments, Amendments to the Claims, and Remarks, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3652, Attn: Dean J. Kramer, 703-872-9326 on March 14, 2003.

Dated: March 14, 2003


Deborah Preza